

Call In Sub-Committee (of the Overview and Scrutiny Management Board) Supplementary Information



Date: Thursday, 20 September 2018

Time: 2.30 pm

Venue: Meeting room, City Hall

Distribution:

Councillors: Gary Hopkins, Mayor Marvin Rees, Craig Cheney, John Goulandris, Claire Hiscott, Tim Kent, Anthony Negus and Mark Weston

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Date: 19th September 18



Supplementary Agenda

4. Call in of Key Decision - Bristol Arena

(Pages 3 - 8)


Exclusion of Press and Public

Please note that the meeting may need to move into closed session and exclude the press and public from the gallery to consider the grounds for Call In which are exempt (i.e. no. 6). If so the Committee will move the following;

That under s.100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item(s) of business on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in paragraph(s)3 (respectively) of Part 1 of schedule 12A of the Act



QUESTION	Executive/Officer response
(a) Proportionality	
1. The decision breached the principle of proportionality by failing to take into account other viable options for the funding and de-risking of the arena island project. The failure to follow up several requests by Stephen Fear and Harvey Goldsmith to meet with an American company interested in developing the arena with private capital is a major breach of process. That this information was withheld in the report makes the decision appear to be very disproportionate.	<p>The action taken - namely the decision to promote alternative development to a proposed arena – is entirely proportionate to the desired outcome, namely securing the most cost effective use of the site. With regard to de-risking the existing arena project, the financial modelling of the revised Operator and Contractor offers was done and presented to Cabinet.</p> <p>There are currently no other viable options which have not already been taken into account. We are open to discussions with any party wishing to promote an arena on any alternative site. We are continuing discussions with two organisations at present, including YTL. There is a great deal of information in the public domain about the YTL proposals. With regard to the party introduced through Harvey Goldsmith there has been an introductory meeting and they are in agreement that the Temple Island site is unsuitable for a number of reasons including its size and are now considering their position further.</p>
(b) Due consultation	
2. The meeting of Full Council the day before the decision gave a clear view of the full council that the Arena should continue and be at Temple island. This meeting was informed by the Cabinet Report and the Mayors disregard for the outcome of the meeting, his dismissal of legitimate views and failure to take into account significant issues raised was a breach of meaningful consultation.	<p>The Motion was not a clear view that the Arena should ‘continue’ at Temple Island. The motion read: <i>‘This Council believes that the best site for Bristol’s Arena, for the benefit of Bristol as a whole, is Temple Island in the centre of Bristol and that the decision taker should be guided by the vote at this meeting.’</i> The Cabinet Paper addressed the broader issues associated with the decision, and that just because the best place for an Arena is Temple Island, it doesn’t follow that the best use of Temple Island is an arena.</p> <p>The Mayor and/or his Deputies are not bound by motions at full Council; this is the essence of a mayoral authority. The decision was taken by the Deputy Mayor who attended the extraordinary Full Council the day before Cabinet and was therefore fully aware of the Motion that was passed and the reasons behind it.</p>
3. The Mayor failed to consult the general public with regard to the policy change on the Arena. It is clear the Mayor has been intent on deleting the arena project at Temple Island for a long time yet in his recent budget consultation he included plans for the Arena with a budget allocation. He had the opportunity at this point to consult the public on this major change in policy and to the capital strategy and council budget but failed to do this. This was a failure in consultation. The Mayor had in his manifesto ‘Our Bristol Plan’ that he would ‘complete the new city arena’. Temple Meads was the only site at the time with none other being considered and the decision at the Cabinet was to end the Arena project. The new plan is a major departure which has not been tested with the public.	<p>The Mayors policy on an Arena hasn’t changed. The Mayor’s position has always been that he supports the arena, but not at any cost.</p> <p>Whilst the budget has always rightly allowed for continuing work on the Temple Island site until a final decision was made, it was also to fund the value for money exercises, to test the ongoing viability of the project and emerging alternative uses of the site. These studies have been disclosed. The decision on the future of the Temple Island site, including the viability of an arena, could only be made once the necessary evidence had been obtained. This was the subject of the Cabinet report.</p> <p>All new proposals for the Temple Island site will be subject to public consultation through the statutory planning process in the normal way. There is no other obligation for public consultation in respect of land use decisions.</p>
4. The Mayor failed to meet and consult with third parties who have an interest in the decision. Arena Island Ltd have asked for a meeting for over 8 months but the Mayor has deliberately chosen to not meet with them failing in the duty to due consultation and leaving the Council at greater legal and financial risk.	In accordance with normal practice, officers have met and had discussions and other communications with relevant third parties, (including the contractor and operator), referring back to the Mayor as required.
5. The Mayor failed to meet with Stephen Fear and Harvey Goldsmith who had indicated verbally and in emails to him and a senior officer (Nigel Greenhalgh) that they had an alternate funding proposal for the Arena. This was a breach of due consultation as defined by Bristol City Council Constitution.	<p>There was not at that time, and nor is there now, an alternative funding proposal for an arena.</p> <p>There was a discussion between Harvey Goldsmith and officers prior to the decision and there was no offer to consider. The role of Harvey Goldsmith has simply been to effect an introduction. This was followed up by officers in the normal way and a meeting has taken place.</p> <p>This party is clear that Temple Island does not meet their requirements.</p>
(c) The taking of professional advice from officers	
6 – Exempt from publication	Exempt from publication
7. Failure of advice with regard to other options – The offer from Harvey Goldsmith and Stephen Fear on June 21st and subsequently in early July to meet the Mayor to discuss the arena was not within the report to Cabinet.	There was no alternative proposal put forward by Mr Goldsmith and therefore no information was withheld.

<p>Since that decision the Mayor has stated:</p>  <p>From the above statement, by the Mayor, it is clear that he is in command of additional information, given to him by senior officers, that was withheld from the published and exempt reports. That an alternative proposal is being considered, was excluded from all written reports and is an ongoing consideration of the council officers yet the Mayor withheld this information from the final decision maker (Cllr Cheney) meant that Cllr Cheney was not able to take professional advice in this regard.</p>	<p>The subject of the Cabinet paper was the best use of the Temple Island site, not a comparison of competing arena proposals, however speculative.</p>
(d) A presumption in favour of openness	
<p>8. The withholding of the offer by Stephen Fear and Harvey Goldsmith and this not being referenced in the report or by the Mayor despite the ongoing work (as referred to by the Mayor) was a breach of a presumption in favour of openness.</p>	<p>The presumption of openness relates to access to, and availability of, information informing the proposed decision.</p> <p>There is no offer – see above – and so this did not form part of the report.</p>
<p>9. The Mayor’s refusal to meet with the council’s own contracted operator, Arena Island Ltd, a failure to use all best endeavours to openly consult in an open manner was a breach of the presumption in favour of openness.</p>	<p>See above – usual practice by officers. The presumption of openness relates to access to, and availability of, information informing the proposed decision.</p> <p>All material, other than the very limited exempt material, has been made available.</p>
<p>10. The failure to allow Arena Island Ltd and developers Bellway full access to figures and documents used by KPMG in preparing their best value report and a lack of direct engagement with them that led to errors within the report was a breach of a presumption in favour of openness.</p>	<p>Bellway are not a party to this proposition and therefore it would be wholly inappropriate to supply information to them. We are not aware of any errors in the KPMG reports.</p> <p>KPMG liaised closely with the operator and contractor (Buckingham) in the development of their reports.</p>
<p>11. The Mayor’s failure to attend the Overview and Scrutiny Management Committee Meeting on September 3rd despite the request was a breach of OSR15, Members and officers giving account. This is a constitutional breach by the Mayor and a breach of the presumption in favour of openness.</p>	<p>Under OSR15, a minimum of 15 clear working days’ notice is required as opposed to the 10 working days’ notice actually given by the chair (invitation received Saturday 18th August). Notwithstanding this, the Mayor had agreed to attend OSM on the 3rd of September.</p> <p>However, subsequently, a Full Council meeting was called for the same day, for which the Mayor had to prepare responses to Public Forum and therefore had to decline OSM.</p>
<p>12. The failure to publish the Decision Record within 2 working days as per OSR15 (the requirement to email the decision to members of OSM) is a breach of the constitution, which gives the appearance of an attempt to frustrate the democratic process and call-in and a breach of a presumption in favour of openness.</p>	<p>The Decision Record was published within 2 working days at 15:59 on the 6th September, but it is acknowledged that no notification was sent to Members. This was due to an administrative error and there is no evidence to suggest it was due to any attempt to frustrate the process.</p> <p>The meeting was webcast and councillors were present and the recommendations were not altered from the published report so the decision record was not holding any new information or alterations that needed written confirmation for specific changed wording.</p> <p>Notwithstanding this, a Call In request was made in time.</p>
(e) Clarity of aims and desired outcomes	
<p>13. Failure to consider other options. Within the report and the decision making process no mention was made of other alternatives to the funding of the Bristol Arena such as the offer from Mr Fear and Mr Goldsmith. This option appears to have been deliberately not looked at. This is in breach of the need to consider other options in detail.</p>	<p>The object of the report was to identify the most cost effective use of the site. There was no other alternative arena funding options available – aside from the revised offers from AIL/the Contractor, which were covered in the Cabinet paper. See above.</p>
<p>14. The decision taken is in conflict with the adopted local plan of the council. Not only does this put it outside of the Policy Framework and the adopted strategic plan for the city centre and enterprize zone it also means that it is at significant risk of not being able to obtain planning permission. This appears to contradict the Mayor’s claim that the decision has been taken to reduce risk and that the alternative scheme is deliverable.</p>	<p>The alternative proposals are not in conflict with the Local Plan or the Enterprise Zone. It is not at significant risk of not being able to obtain planning permission as the scheme will be wholly compliant.</p> <p>The Central Area Local Plan Policy BCAP35 allows for the uses in the illustrative alternative scheme and whilst the Policy says it will include an Arena, in reality planning can facilitate /plan for but cannot insist an arena is delivered.</p>

15. The conflict with the councils adopted policies and its policy and budget framework not only means that the decision is at significant risk of legal challenge it is arguably not one the executive had lawful power to make.	The alternative proposals are not in conflict with any adopted policies or the budget framework. Indeed, some policies, such as those relating to the delivery of housing, enterprise, jobs and value for money are all better achieved under the Alternative Scheme proposals.
16. The Mayor has now made public statements that he will consider other options for the site, including that of an arena, since this decision was made. The aims seem unclear and this consideration of other options should have been made before the decision was taken.	Other arena proposals for other city centre sites will be considered, but the Cabinet decision supports the alternative scheme proposals for the Temple Island site.
17. A perception of a conflict of interest has been allowed to develop which has damaged the office of mayor, councillors and Bristol City Council's reputation. Irrespective of the reality in this procurement process this perception has undermined the aims and desired outcomes of the decision making process.	The Mayor has no personal conflict and any perception of such is unfounded. In any event, the decision was passed to his deputy to make given that property sits within his portfolio. Officers understand and abide by professional codes of conduct.
18. In recognising that Temple Island is the best location of the Arena, and voting for the all-party resolution to this effect, only to then perform an about-face on this the following day betrays muddled, contradictory thinking on this.	<p>There has been no "about-face". The Mayor has been clear that he supports an arena, but not at any cost.</p> <p>The Mayor stated his support for the motion, but, because of its simplicity, the motion failed to understand the decision to be made. He stated that just because the best place for the arena is Temple Island, it doesn't follow that the best use of Temple Island is for an arena.</p> <p>The evidence base presented in the Cabinet paper demonstrated that the best use for the Temple Island site is for the alternative mix of uses. There is a clear audit trail documenting the process followed and the decision made.</p>

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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